



# Mining

in 35 jurisdictions worldwide

# 2011

Contributing editors: Michael Bourassa and John Turner



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# Albania

## Alketa Uruçi and Bers Hado

Boga & Associates

### Mining industry

- 1 What is the nature and importance of the mining industry in your country?

The mining industry of Albania has served for the past 50 years as a supporting pillar of industrial growth and economic connections, building on underlying chrome resources that, before 1990, made it the world's third-largest producer of chrome ore, together with nickel, iron and copper. After 1990 considerable parts of the mining sector's activities appear to have become commercially unviable, or at best marginal.

In recent years, the Albanian government has given top priority to this sector, by considering it as a 'core industry', able to stimulate the economic development of Albania. To this end, the Albanian governments have undertaken several reforms such as privatisation, adoption of a legal framework for licensing mining activities, enacting policies for foreign investors consisting of incentives regarding the transfer of capital and special fiscal treatment aiming to restart production and bring the sector back to its economic potential.

At present, the sector shows signs of recovery. Such a change is expressed by the increased number of investments in both smaller and large-scale mines, as well as increased output and employment, and the higher capacities of downstream processing of minerals. To date, more than 851 mining permits have been issued in the mining sector by the Ministry of Economy, Trade and Energy. The production of non-metallic minerals has increased rapidly to 44 types of minerals, reaching the level of 5 million tonnes of production per year, which includes the production of construction materials, argil (used for the production of cement) and decorative stones. Additionally, the Albanian state has undertaken several investments related to the monitoring and rehabilitation of mines as well as prevention of mining risks (closure of unexploited mines).

Within the implementation and harmonisation of the Albanian legislation with the *acquis communautaire*, the Albanian Parliament has adopted the Mining Sector Law (No. 10304, dated 15 July 2010) which abrogated the old Mining Law (No. 7796, dated 17 February 1994). The new law, which entered into force as of 27 August 2010 (hereinafter referred to as the 'Mining Sector Law') reflects the provisions of EU Directive 2006/21 dated 16 March 2006 'On Management of Waste from Extractive Industries'.

- 2 What are the target minerals?

The largest share of minerals produced in Albania is as follows:

- chrome;
- copper;
- iron-nickel and nickel-silicate;
- bitum and bituminous sand;
- limestone;
- limestones flags;
- marbled limestones;

- silica sand;
- clays; and
- gypsum.

- 3 Which regions are most active?

#### Chrome

From the geographic perspective, there are three main regions where chrome is located:

- north-eastern region (Tropoja and Kukes Ultrabasic Massifs);
- central region (Bulqiza Ultrabasic Massif); and
- south-eastern region (Shebenik-Pogradec Ultrabasic Massif).

#### Copper

Based on the geologic conditions, there are distinguished four main types of copper deposits:

- hydrothermal-metasomatic and volcanogenic-sedimentary deposits, such as Munella, Qafe-Bari, Gurth, Rruga e Rinisë, etc;
- volcanogenic-hydrothermal-metasomatic deposits, such as Tuç, Spaç, Derven, Paluca, etc;
- volcanogenic-sedimentary deposits, such as Munella, Gjegjan, Palaj, Karma, Rubik; and
- massif sulphide metasomatic deposits, such as Kurbnesh, Golaj, Thirra, Nikoliq.

#### Iron-nickel and nickel-silicate

From the geographic perspective:

- iron-nickel and nickel-silicate are mainly located in:
- Devoll (Bilisht, Bitincka, etc);
- Pogradec (Guri Kuq, Çervenaka, etc);
- Librazhd (Prrenjas, Skroska, Xixillas, Bushtrica); and
- Kukes (Mamez, Trull Surroj, Nome).

### Legal and regulatory structure

- 4 Is the legal system civil or common law-based?

The Albanian jurisdiction is a civil law legal system.

- 5 How is the mining industry regulated?

From an historic point of view, all activities in the mining industry were conducted under the supervision of the Albanian state (centralised system).

The relationship between the Albanian state (represented by the Ministry of Economy, Trade and Energy – METE) and the entities involved in mining activities are governed by the Mining Sector Law.

Furthermore, the Mining Sector Law allows the stipulation of 'incentive agreements' if the mining activity consists of the exploitation of minerals of the group of metallic and non-metallic minerals,

cobbles and bitumen, group of construction materials) or group of radioactive minerals in a certain area. This agreement is entered into between the holders of the exploitation permit and METE provided that the mining activity is considered as having a particular public interest for the area where such activity will be implemented. This agreement is subject to approval by the Council of Ministers (CM) and the Albanian Parliament.

- 6 What are the principal laws that regulate the mining industry? What are the principal regulatory bodies that administer those laws?

The principal law governing all mining activities (including underground and underwater activities) performed within the territory of Albania is the Mining Sector Law. Specifically, this law gives the classification of minerals, types of permits and the terms and conditions that apply to each type of mineral permit.

The procedure and the terms for obtaining the mineral permit are defined in the Licensing Law (Law No. 10081, dated 23 February 2009). In principle, the request for obtaining the mineral permit (or notifying any relevant changes to the existing permits) is subject to filing and notification to the National Licensing Centre (NLC). This entity conducts a preliminary examination of the documents filed and afterwards forwards the file to METE, which issues or adopts the final decision.

- 7 What classification system does the mining industry use for reporting mineral resources and mineral reserves?

The Mining Sector Law classifies the types of minerals in groups. In addition, mining permits are issued under consideration of the group of mineral specified in the application or request. Specifically, the mineral reserves are divided into:

- metallic minerals, non-metallic minerals, cobbles and bitumen;
- construction minerals;
- precious stones and semi-precious stones; and
- radioactive minerals.

Albania has not adopted yet the international classification standards, which are common in other mineral-producing countries, although the Albanian government is making efforts to attract international mining companies that comply with 'good practice' when implementing mining activities. In general, these companies are listed on international stock exchanges, and tend to use uniform rules for handling resources and reserves calculations and recognised reporting codes (eg, CIM or JORC).

#### Mining rights and title

- 8 To what extent does the state control mining rights in your jurisdiction? Can those rights be granted to private parties and to what extent will they have title to minerals in the ground? Are there large areas where the mining rights are held privately or which belong to the owner of the surface rights? Is there a separate legal regime or process for third parties to obtain mining rights in those areas?

According to the Mining Sector Law the minerals in natural form, located in the Republic of Albania, and in the underwater surface, sea floor, under the sea floor, or under the territorial sea, determined under principles of international law and international agreements ratified from the Republic of Albania belong to the state and are public property. The rights to exploit mineral resources can be granted to private domestic or foreign persons upon mining permits, which are awarded in compliance with the procedures provided from the Mining Sector Law. The mining right is a distinct and independent right from the ownership right over the land surface. The holder of the mining permit has the legal right of mining servitude (mandatory) over the property in the area approved upon the mining permit.

However the terms of usage of the servitude should be regulated through a contract compiled in accordance with the provisions of the Albanian Civil Code.

- 9 What information and data is publicly available to private parties that wish to engage in exploration and other mining activities? Is there an agency which collects mineral assessment reports from private parties? Must private parties file mineral assessment reports? Does the agency or the government conduct geoscience surveys, which become part of the database? Is the database available online?

The National Agency of Natural Resources (NANR) and the Albanian Geological Service (the AGS) are empowered for designing the maps of mining activities for research, explore, exploit activities and keeping the relevant database regarding such maps. Furthermore, the AGS keeps the archive of the existing geological reports and the evaluation of reserves for group of minerals as per their classification of the old Mining Law (No. 7796, dated 17 February 1994). AGS is preparing also relevant geological and geophysical surveys for different regions and mineral types. Private parties that intend to conduct activities of research and planning for the mining sector should be equipped with the relevant licence from the NLC. Foreign entities engaged in activities of research and planning for the mining sector in their country of origin are required to perform the equivalence of their professional licence issued by the relevant and competent authorities in their country of origin. Actually the electronic database regarding mining activities published on the Albanian authority's websites results to have functioning problems or not updated information.

- 10 What mining rights may private parties acquire? How are these acquired? What obligations does the rights holder have? If exploration or reconnaissance licences are granted, does such tenure give the holder to a preferential right to acquire a mining licence?

Under the Mining Sector Law, Albanian or foreign legal entities may acquire the right to research, explore, exploit or perform activities that consist of the combination of all indicated activities, depending on the mineral group. Specifically, for minerals of groups of metallic minerals, non-metallic minerals, cobbles and bitumen, group of construction minerals and the group of radioactive minerals a separate and distinct permit is issued for each of the following activities: research-exploration or exploitation. For groups of precious and semi-precious stones, mining rights may be granted including all the activities (ie, research-exploration, exploitation).

The holder of a research exploration permit has a preferential right to obtain an exploitation permit, which (right) should be exercised during the term of the research-exploration permit or within 60 days after its expiry.

Mining rights subject to a bid procedure (ie, if the mining area is listed as the 'bid area' in the Annual Mineral Plan, which is approved by METE) is granted to the winning bidder. Such mining rights may be granted to Albanian or foreign legal entities either in pursuance with the Public Procurement Law (Law No. 9643, dated 20 November 2006) or under the legal requirements of the Concession Law (Law No. 9663, dated 18 December 2006). For the mining areas that are classified as 'opened areas', the permit is granted based on the principle 'first come, first served'.

The holder of the mining rights has to comply with the general obligations applicable to any type of mining permit and the specific obligations pertaining to the relevant type of permit. Specifically, the holder of mining rights shall provide a financial guarantee, which may serve for guaranteeing the rehabilitation of the environment, the realisation of the minimal work programme under the research, exploration or research and exploration permit and the realisation of the investment obligations under the exploitation permit. The other obligations are related to royalty tax, preparation of the rehabilita-

tion plan and the management of mining residues, site security measures, prevention of contamination, confidentiality, submission of the relevant reports on investments, etc.

- 11** Is there any distinction in law or practice between the mining rights that may be acquired by domestic parties and those that may be acquired by foreign parties?

The Mining Sector Law does not provide for any restrictions on foreigners acquiring mining rights. It should be noted that during recent years the Albanian government has been adopting policies attractive for foreign investors to encourage them to invest in the Albanian mining sector. In practice, foreign investors have entered into joint ventures with local companies, basically for reasons related to business planning and implementation, aiming to use the knowledge and experience of the local companies for overcoming the challenges and problems that they have to face when conducting mining activities in Albania.

- 12** How are mining rights protected? Are foreign arbitration awards in respect of domestic mining disputes freely enforceable in your jurisdiction?

Mining rights are protected by the rule of law in Albania. In practice, completion of judiciary processes takes approximately four to six years (from filing of the claims at the first instance court until issuance of a decision of the Supreme Court). This is due to the lack of experience of the judges in the civil courts and the fact that administrative courts have not yet been established.

Additionally, if the permit is granted within the framework of the Public Procurement Law or the Concession Law, disqualified bidders may file administrative appeals with the Albanian Public Procurement Commission. The decision of the Public Procurement Commission constitutes a final administrative decision. Afterwards, the claimant may file its claim (should the claimant be not satisfied by the decision) with the court, within 30 days after receipt of the notification of the decision of Public Procurement Commission.

The Republic of Albania has ratified the Convention on the Recognition and Enforcement of Foreign Arbitration Awards (New York 1958) and consequently foreign arbitration awards are enforceable in Albania.

- 13** What surface rights may private parties acquire? How are these rights acquired?

The holder of the permit enjoys the right of servitude pertaining to the area indicated in the permit. The right of servitude imposes on the owner of the land the obligation to allow the holder of the permit to use the land, and perform all relevant activities or supporting works in pursuance with the type of the permit. The right of servitude may be also granted for purposes of having access into the mining site.

When the mining area is privately owned, the parties shall enter into a servitude agreement. The term of the said agreement is linked to the duration of the relevant type of mining permit. Should the owner of the land and the permit holder not strike an agreement within 30 days from the request of the latest addressed to the owner, the permit holder may approach the court, which will decide in such regard.

- 14** Are any areas designated as protected areas within your jurisdiction and which are off-limits or specially regulated?

According to Law No. 8906, dated 6 June 2002 'On the Protected Areas' important or threatened parts of the territory are declared as protected under the following categories:

*Category I* – strict natural reserve/scientific reserve (mining activities not allowed);

*Category II* – national parks (mining activities not allowed);  
*Category III* – natural monuments (mining activities not allowed);  
*Category IV* – managed natural reserves (mining activities not allowed);

*Category V* – protected landscape (several activities permitted if provided with environmental permit); and

*Category VI* – protected areas of managed resource (several activities permitted if provided with environmental permit).

A list and the relevant map of the protected areas is published in the website of the Ministry of Environment.

#### **Duties, royalties and taxes**

- 15** What duties, royalties and taxes are payable by private parties carrying on mining activities? Are these duties, royalties and taxes revenue-based or profit-based?

Each permit holder shall pay the mining rent (royalty tax) to the Albanian state, levied on the minerals sold, under consideration of the type of the mining permit.

Starting from entry into force of new amendments of the Law on National Taxes (No. 9975, dated 28 July 2008) the royalty tax shall be fixed as a percentage over the sale price of minerals. The tax rate depends on the type of minerals, but in any case it does not exceed 10 per cent; in the case of metallic minerals the tax rate varies between 4 per cent and 10 per cent (depending on the specific metallic mineral), while for non-metallic minerals it is 4 per cent. Semi-precious stones and precious stones are taxed at 10 per cent of the sale price. Previously, the Law on National Taxes provided for a minimum and maximum rate of royalty tax for each mineral and the Council of Ministers was authorised to determine the specific rate applicable.

In addition, the mining activity is subject to taxation in pursuance with the Albanian tax legislation (ie, VAT, profit tax, etc).

- 16** What tax advantages and incentives are available to private parties carrying on mining activities?

Incentives may be granted based on an 'incentive agreement' (see question 5). The Mining Sector Law does not specifically refer to the kind of incentives to be granted to the private investors or entities engaged in the mining sector. Under the old Mining Law, incentives were granted to attract foreign investors to export-oriented activities and consisted mainly of tax exemptions.

- 17** Is there any distinction between the duties, royalties and taxes payable by domestic parties and those payable by foreign parties?

The Mining Sector Law does not provide for any distinction between domestic and foreign parties.

#### **Business structures**

- 18** What are the principal business structures used by private parties carrying on mining activities?

Considering that the Mining Sector Law does not provide for specific rules related to the business organisation form of entities applying for obtaining mining rights, each entity may decide to carry out the business activities in pursuance with the options provided for in the Commercial Companies Law (No. 9901, dated 14 April 2008), either by establishing a local company (a limited liability company or a joint-stock company is most commonly used form) or branches. In any case, it is advisable that reference be made to the bid documents (for mining rights under a 'bid area') in order to verify any requirements in such regard.

**19** Is there a requirement that a local entity be a party to the transaction?

No, there is not any requirement that a local entity be party to the transaction.

**20** Are there jurisdictions with favourable bilateral investment treaties or tax treaties with your jurisdiction through which foreign entities will commonly structure their operations in your jurisdiction?

The Republic of Albania has entered into bilateral investment treaties with the following states and organisations:

- Austria;
- Bosnia – Herzegovina;
- Bulgaria;
- China;
- Croatia;
- Czech Republic;
- Denmark;
- Egypt;
- Finland;
- France;
- Germany;
- Greece;
- Holland;
- Hungary;
- Israel;
- Italy;
- Kosovo;
- Kuwait;
- Lithuania;
- Macedonia;
- Malaysia;
- Moldova;
- OPEC
- Poland;
- Portugal;
- Rumania;
- Russia;
- Serbia;
- Slovenia;
- South Korea;
- Spain;
- Sweden;
- Switzerland;
- The Belgian – Luxembourg Economical Union;
- Tunisia;
- Turkey;
- UK and Northern Ireland;
- Ukraine; and
- USA.

The Republic of Albania has entered into double tax treaties with the following states:

- Austria
- Belgium;
- Bosnia – Herzegovina;
- Bulgaria;
- China;
- Croatia;
- Czech Republic;
- Egypt;
- France;
- Greece;
- Holland;
- Hungary;
- Italy;
- Kosovo;

- Latvia;
- Luxembourg;
- Macedonia;
- Malaysia;
- Malta;
- Moldova;
- Norway;
- Poland;
- Romania;
- Russia;
- Serbia;
- Slovenia;
- South Korea;
- Sweden;
- Switzerland; and
- Turkey.

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### Financing

**21** What are the principal sources of financing available to private parties carrying on mining activities? What role does the domestic public securities market play in financing the mining industry?

The principal financing sources are self-financing either through local or foreign financial institutions. To the best of our knowledge, financing of mining activities does not take place through the Albanian public securities market.

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### Restrictions

**22** What restrictions are imposed on the importation of machinery and equipment or services required in connection with exploration and extraction?

The Mining Sector Law does not specifically address issues related to importation of machinery or equipment necessary for conducting mining activities. Import of equipment and machinery necessary for implementing the mining activity is not subject to any authorisation or permit. For the majority of imported equipment and machines the custom duties are zero per cent.

VAT (currently at 20 per cent rate) is applied on equipment and machinery imported for investment purposes, but the Law on VAT (No. 7928, dated 27 April 1995) establishes a VAT deferral scheme for such equipment and machinery. Accordingly, the payment of VAT is deferred for up to 12 months from the import of machinery and equipment. The deferral period can exceed 12 months upon approval of the minister of finance when the investment period (ie, period between importation of machinery and commencement date of supplies of goods or services) will be longer than 12 months.

**23** What restrictions are imposed on the processing, export or sale of minerals? Are there any export quotas, licensing or other mechanisms that prevent producers from freely exporting their production?

There are no provisions imposing quotas, restrictions or limitations related to the processing, export or sale of metallic minerals.

**24** What restrictions are imposed on the import of funds for exploration and extraction or the use of the proceeds from the export or sale of minerals?

Income deriving from the export or sale of metallic minerals is not subject to any restriction or limitation under Albanian legislation. Profits resulting from mining activities may be repatriated, after taxation. There is no foreign currency exchange control applicable in Albania.

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**Environment**


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- 25** What are the principal environmental laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The principal environmental law having an impact on mining activities is the Law on Environmental Protection (Law No. 8934, dated 5 September 2002), which attributes to the Agency for the Environment and Forests the function of central authority that, along with the regional agencies, is in charge of monitoring and adopting measures for the protection of the environment. Apart from the said authorities, the Environment Inspectorate is the entity in charge of controlling the status of the environment as well as the implementation of the law, being at the same time entitled to impose sanctions if the law is infringed.

- 26** What is the environmental review and permitting process for a mining project? How long does it normally take to obtain the necessary permits?

The environmental review and permitting process involves the Ministry of the Environment as well as the regional environmental agencies. Certain projects in the mining sector having a considerable environmental impact might be subject to an in-depth report on environmental impact assessment (and a requirement to obtain an environmental permit in pursuance of the Law 'On Environmental Impact Assessment'). The said law provides no fixed terms for the assessment procedure. The duration of such procedure depends on the volume of the study for the environmental impact of the project. Those mining activities that do not fall under the in-depth environmental impact assessment are subject to the environmental authorisation or consent issued by the local government (municipalities or communes).

- 27** What is the closure and remediation process for a mining project? What performance bonds, guarantees and other financial assurances are required?

Pursuant to the Mining Sector Law, abandoned mines might be subject to closure or conservation.

The process of closure and monitoring of abandoned mines depends on the status of the administrators of these mines. If the mines were previously administered by the Albanian state, the closure and monitoring is subject to approval by the Council of Ministers, upon a proposal of METE. The plan on closure and monitoring is prepared by a specialist approved by METE.

Closure and monitoring of mines previously administered by private legal entities, however, is subject to approval by METE. In such case, closure and monitoring is performed based on the closing and monitoring plan submitted in the permit application.

Abandoned mines might fall under the conservation regime, if there is a failure to implement the closure and monitoring plan.

METE is entitled to call or withdraw the financial guarantee in the following circumstances: waiver by the holder of the permit from the mining rights, or termination of the activity before expiration of the permit term based on a decision of the METE. The amount of this annual guarantee varies according to the term of the permit, business plan, etc.

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**Health & safety, and labour issues**


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- 28** What are the principal health and safety, and labour laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The Republic of Albania has ratified the ILO Convention C176 'On Safety and Health in Mine'. The domestic labour legislation in Alba-

nia is mainly ruled from the Law No. 7961, date 12 July 1995 'On the Labour Code' as amended. The Labour Code provides for basic principles that should be complied with in order to ensure health and safety in working premises. More specific rules and requirements for the improvement of the health protection and safety at work have been established upon Law no. 10237, dated 18 February 2010 'On Health and Safety at Work', which was drafted in accordance with the EU recommendations provided upon the Framework Directive of the European Commission 89/391/EEC. Regulatory competences on the labour legal framework in Albania are granted to the Ministry of Labour, Social Issues and Equal Opportunity. The entity engaged with the enforcement/monitoring of the aforementioned legal acts is the State Work Inspectorate.

Furthermore, each entity involved in the mining industry shall comply with the requirements of the Decision of the Council of Ministers No. 1109, dated 30 July 2008 'On Insurance of the Employees Engaged in the Mining Sector Regarding Accidents at Work' as well as the secondary legislation issued in pursuance of the said decision. Accordingly, each entity shall insure its employees with an Albanian insurance company against accidents at work.

The National Agency for Natural Resources and the Department for Inspection and Recovery of Mines are the authorities engaged in performing periodical technical controls on the safe operation of mines.

- 29** What restrictions and limitations are imposed on the use of domestic and foreign employees in connection with mining activities?

The Mining Sector Law does not impose any limitation or restriction with regard to the personnel engaged in mining activities; rather the Law on Foreigners (No. 9959, dated 17 July 2008) governs this matter. According to the Law on Foreigners, foreign personnel engaged in projects implemented in Albania must obtain a work permit, which is granted under consideration of the developments and needs of the Albanian employment market (ie, assessment of whether an unemployed Albanian citizen might have been engaged in the relevant function or position).

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**Social and community issues**


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- 30** What are the principal community engagement or CSR laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

There are not specific legal acts in Albania that regulates the corporate social responsibility, however Law No. 9901 dated 14 April 2008 'On Entrepreneurs and Commercial Companies' embraces some of the principles of 'Corporate Social Responsibility' especially introducing the principle that company's activities should not negatively impact the environment.

- 31** How do the rights of aboriginal, indigenous or currently or previously disadvantaged peoples affect the acquisition or exercise of mining rights?

Not applicable.

- 32** What international treaties, conventions or protocols relating to CSR issues are applicable in your jurisdiction?

There are no international treaties, conventions or protocols relating to CSR issues applicable in Albania.

**Update and trends**

The Albanian government intends to implement incentive policies and promote the effective restructuring of the mining industry, the development of domestic and foreign investment in the mining sector towards a proper management of natural resources in terms of their rational exploitation, proper management of the territory and of geo-environment in order to serve the community. Furthermore the objectives of the Ministry of Economy, Trade and Energy are the following:

- monitoring of the effective exploitation of mineral resources;
- monitoring of the phenomenon of post-exploitation and metallurgical plants;
- promotion of new minerals and new technologies in line with the principles of environment protection;
- elaboration of EU Directives;
- digitalisation of the data of the mining industry; and
- continuation of closure of ineffective exploited mines and privatisation of assets.

**International treaties**

**33** What international treaties apply to the mining industry or an investment in the mining industry?

Albania is a candidate country of the Extractive Industries Transparency Initiative (EITI), an initiative that aims to strengthen governance by improving transparency and accountability in the extractive sector. Implementation of EITI would improve transparency and accountability in the Albanian extractive industry sector and thus will make it easier for the Albanian government to estimate its economic contribution.

Currently, negotiations for a cooperation agreement in the mining sector between Albania and Kosovo are under way.

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